

## REMARKS

### **I. Status of the Application**

The present Office Action indicates that claims 1-31 are pending in the application. However, Applicant presented claims 1-32 in the Amendment and Response filed July 30, 2007. Accordingly, Applicant believes that claims 1-32 are presently pending. Applicant would appreciate confirmation by the Examiner of the pending claims and also examination of claim 32 added July 30, 2007, if it has not already been examined.

Claims 1-14, 19-31 stand rejected under 35 U.S.C. § 103(a) as being obvious over Howorth US 3,602,213 in view of van der Waaji US 3,893,457. Claims 15-18 stand rejected under 35 U.S.C. § 103(a) as being obvious over Howorth US 3,602,213 in view of van der Waaji US 3,893,457 and further in view of Wiedner US 5,860,420.

Applicant has amended claims 1 and 17 in order to more clearly define and distinctly characterize Applicant's novel invention. Support for the amendments can be found throughout the specification as filed.

Accordingly, the amendments introduce no new matter. Applicant respectfully requests reconsideration of the present application in view of the following remarks, which are intended to place the application in condition for allowance.

### **II. Claims 1-14 and 19-32 Are Patentable over Howorth and van der Waaji**

Claims 1-14 and 19-32 stand rejected as being obvious in view of the Examiner's combination of Howorth US 3,602,212 and van der Waaji US 3,893,457. Applicant respectfully traverses this rejection.

Claim 1 is directed to an operation unit and recites, at least in part, an air flow unit comprising air inlet means being provided *for retracting air from within said operation unit* to said air flow unit. The Examiner has admitted that Howorth fails to teach this feature of the claims. This is in fact correct because Howorth teaches to do *just the opposite*, namely to the obtain air from *outside the operating unit*. This is clearly shown in all of the figures where the air flow unit, air inlet and air outlet are all positioned above and exterior to the operating unit. The intake air flow openings of Howorth do not retract air to the air flow unit from within the operation unit. Applicant respectfully submits that if Howorth contemplated or was even concerned with retracting air from within the operation unit, he would have said so.

Claim 2 defines the operating unit in terms of side walls, a roof element and a back wall, in addition to the wall of claim 1, to enclose a space. Claim 2 further requires that the air outlet and the air inlet are within the space defined by the walls and the roof. In the present office action at page 2, the Examiner says that Howorth teaches the roof element, referring to a1 in Figure 3. However, a1 seems to be a cross-section of the ceiling with no indication of where the ceiling extends. It is clear from Figure 1 that the air flow unit is positioned above the operation unit and directs air flow through the top of the operation unit, which is clearly open. If there was a roof, as the Examiner implies from a1, it would be impossible for the air flow unit to direct air flow into the operation unit. There is no roof on the operation unit of Howorth, and none can be implied from Figure 3, as that figure clearly shows a ceiling that may surround the operation unit and the air flow unit, but certainly not covering the operation unit. A roof would defeat the purpose of Howorth.

Further, the Examiner has identified no citation from Howorth to support the Examiner's structural allegation that the air inlet and air outlet are within the space defined by the roof and

walls. This feature of the invention cannot be ignored. Support for this feature identified by the Examiner in the prior art is glaringly absent. In stark contrast, Howorth's air flow unit, air inlet and air outlet are all unmistakably shown in each figure as being above and outside of the operation unit defined by Howorth's walls.

The Examiner further admits that Howorth fails to teach the claimed feature of a foldable roof element (claim 4) and wheels attached to the operation unit (claim 13).

Claim 9 depends from claim 1 and recites that the outflow direction of said outflow opening is directed downward in a direction away from said wall. Howorth fails to disclose that outflow is directed away from the wall. Howorth discloses that the outflow of tubes B is directed downward parallel to the walls and, at least partially, radially outward from the tubes B towards the wall.

Claim 10, which also depends from claim 1, recites that the air inlet opening is situated lower than said outflow opening. In contrast, Howorth discloses that intake openings D and b are located above outflow tubes B.

Admitting that Howorth does not teach all of the claim limitations, the Examiner looks to van der Waaji for the features missing from Howorth. The Examiner believes that van der Waaji teaches the air inlet retracting air from within the operation unit. The Examiner defines the operating unit of van der Waaji as the area defined by the cabinet 1 and the curtain 15 and the operating table 11. This makes sense because this is the area where the patient is located and is the enclosed area where operations are to take place. Notably, however, there is no side wall at the end of the operating table to produce an enclosed area. The air simply flows over and past the patient being operated on. Applicant notes that the curtain 15 clearly does not extend below the operating table where the intake is located. Therefore, based on the Examiner's own

understanding of the area defined as the operation unit, the area underneath the operating table would not be included as being within the operation unit. The air intake is, therefore, not within the operation unit, as required by claim 2.

Furthermore, as clearly indicated by the arrows in Figure 2, the air is retracted from outside the operating unit, just like Howorth. Furthermore, the nature of the air flow out of the air outlet of van der Waaji and across the top of the operating table and past the patient as indicated by the arrows of Figure 2 prevents air from the area above the operating table, i.e. air within the operating unit defined by the Examiner, from being sucked into the air inlet positioned near the floor. Only air located near the floor and outside of the operating unit enters the air inlet as specifically indicated by the arrows in Figure 3 of van der Waaji. Air from the operating unit of van der Waaji simply cannot be drawn into the air inlet.

Accordingly, neither Howorth nor van der Waaji teach the claimed features of the air inlet retracting air from within the operation unit (claim 1) or the air inlet being within the operation unit (claim 2.) In addition, van der Waaji does not teach a roof element (14) as argued by the Examiner at page 4. Clearly, element 14 is a guide for the curtain 15 (see col. 2 lines 46-48). It is a curtain rod and not a roof. If the Examiner maintains that element 14 is a roof, the Examiner is respectfully requested to identify the roof structure, or provided a reasoned basis of why one of skill in the art would understand the curtain rod is a roof. Since the Examiner's combination of references fails to teach or suggest all of the claim limitations, the Examiner has not established a prima facie case of obviousness, and the rejection should be withdrawn.

Furthermore, Applicant respectfully disagrees with the Examiner's basis for combining Howorth and van der Waaji. The Examiner has not provided the articulate reasoning supported by rational underpinnings required by *KSR*. Even if van der Waaji did teach an air inlet

retracting air from within the operating element (which it clearly does not), in order to modify Howorth with this teaching, one of skill would have to orient the extensive duct work and air flow unit in the top floor of Figure 3 somehow into the operation unit. Clearly, the structure of Howorth is so large and cumbersome as to provide a teaching against its being somehow reoriented or included into the operating element.

### **III. Claims 15-18 Are Patentable over Howorth, van der Waaji, and Wiedner**

Claims 15-18 stand rejected as being obvious in view of the Examiner's combination of Howorth US 3,602,212, van der Waaji US 3,893,457 and Wiedner US 5,860,420. Applicant respectfully traverses this rejection.

Claim 15 is directed to a method for preparing a person for surgery and recites, at least in part, a part of the body of said person on which surgery is to be performed is moved through an opening under a cover, especially a cloth, an opening being provided in said cloth disclosing an operation area, a flow of substantially sterile air being guided over said cover and at least said operating area. Claim 18, which is directed to a method for performing surgery, contains similar recitations. The Examiner admits that Howorth fails to disclose an opening in a cloth disclosing an operation area. Additionally, Howorth fails to disclose a flow of substantially sterile air being guided over said cover and at least said operating area. At most, Howorth discloses a uniform flow of air downward from the ceiling. Howorth's flow of air is not specifically guided over a cover and the opening in the cover disclosing an operating area. Van der Waaji, which teaches uniform flow of air across the entire operating unit, likewise does not teach flow of air specifically guided over a cover and the opening in the cover disclosing an operating area. Wiedner fails to cure the deficiencies of Howorth and van der Waaji.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 15-18 as being obvious over Howorth, van der Waaji and Wiedner.

**VI. Conclusion**

Having addressed all outstanding issues, Applicant respectfully requests reconsideration and allowance of the case. To the extent the Examiner believes that it would facilitate allowance of the case, the Examiner is requested to telephone the undersigned at the number below.

Fees for a three-month extension of time have been included with a Petition of Extension of Time supplied herewith. The Commissioner is authorized to apply any additional charges or credits to Deposit Account No. 19-0733.

Respectfully submitted,

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By   
John P. Iwanicki, Reg. No. 34,628  
BANNER & WITCOFF, LTD.  
28 State Street, 28th Floor  
Boston, MA 02109  
(617) 720-9600